IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

SECOND APPEAL NO.792 OF 2004

Namdeo Nathu Patil
res. at Bhal,
Tal: Alibag,
Dist: Raigad. ..Appellant
(Original Plaintiff)

Versus

1. Krishna Hiru Patil,
2. Chander Mahadeo Patil,
3. Kashinath Laxman Thale,
4. Machindra Narayan Thale, (Deleted)
5. Balindra Bhakar Thale,
6. Prabhakar Chander Dalvi,
7. Narayan Hari Dalvi,
8. Govind Hiru Dalvi,
9. Janu Laxman Thale,
10. Pandu Janu Dalvi (Expired)
11. Krushna Pandurang Dalvi,
12. Manohar Kashinath Patil,
13. Raghunath Mahadeo Patil,
14. Ashok Gopal Thale, (Expired)
15. Sanjay Dattatraya Dalvi,
16. Sharad Bhaskar Thale

..Respondents
(Original Defendants)

Ms.Gauri Godse for the appellants

Mr.P.S.Dani for the respondents

CORAM: S.R.SATHE, J.

DATE : 21st JUNE, 2005

Judgment.

1. Heard both the learned Advocates at length.

2. Appellant, the Original Plaintiff, whose suit for declaration and injunction was dismissed by the trial Court and the said dismissal was confirmed by the Appellate Court, has filed the present Second Appeal.

3. Appellant/Plaintiff filed suit for declaration and injunction in the Court of C.J.J.D, Alibag, stating therein that the land admeasuring 3Hectare 20 Ares out of Survey No.20 of Village Bhal, Taluka Alibag is owned and possessed by him. Plaintiff’s forefathers planted mango trees in the said land and started taking fruits of the same. Thus, for a period of about 70 years the said land is in his possession. Accordingly though the said land was standing in the name of all the villagers in the Record of Rights and the villagers were shown in possession of the same, for a period of about 70 years nobody obstructed Plaintiffs forefathers or Plaintiffs to take mango fruits of the trees situated in the suit land and thus Plaintiff became owner by adverse possession. However, in the year 1998, defendant Nos.1, 5, 6 and some other Defendants obstructed the Plaintiff. He, therefore, filed an application before Talathi on 7.1.1998 to get his name entered in the Record of Rights. In pursuance of the said application Talati visited the property and drew panchanama and thereafter the Plaintiff’s name was also entered in the

Record of Rights of the suit land. The Defendants, however, made a complaint to police on 23.8.1998. The police also gave threat to Plaintiff to dispossess. Hence, he filed the suit No.132 of 1998 and prayed for declaration that he has become the owner of the suit land by adverse possession and also claimed injunction.

4. The Defendants 1, 5, and 6 filed their written statement and resisted the suit claim. They contended that the land in question is owned by the Villagers and the same is standing in their name. The Plaintiff or his forefathers had no right, title and interest and the land was never in their exclusive possession. They, therefore, denied the Plaintiffs case and by way of counter claim also contended that in case Plaintiff is found in possession of the suit land then he be directed to hand over the possession.

5. In order to prove their respective claims, both the parties adduced evidence. After considering the said evidence the trial court came to the conclusion that the Plaintiff has proved that for several years he and his forefathers were taking mango fruits of the trees situated in the said land. However, the Plaintiff failed to prove his exclusive possession and that he has acquired title by adverse possession. The

trial Court, therefore, dismissed the Plaintiff's suit.

6. The Plaintiff challenged the said order in the Court of 3rd Adhoc District Judge, Alibag. However, the first Appellate Court held that Plaintiff has failed to prove his exclusive possession of the suit land and also failed to prove title to the suit land by adverse possession and therefore dismissed the appeal.

7. Ms. Godse, learned Advocate for the Appellant/Plaintiff has urged three points. Firstly, she submitted that the First Appellate Court erred in not framing separate specific issue about possession and ownership by adverse possession and that has resulted into prejudice to the Plaintiff. Secondly, she canvassed before me that the First Appellate Court erred in holding that the Plaintiff failed to prove his exclusive possession and title by adverse possession. Lastly, she submitted that by virtue of order passed on Exhibit 63 the trial Court has dismissed the counter claim for injunction made by the Respondents and the Respondents have not challenged the said order and as such the claim made by them as regards their exclusive ownership and possession stands finally decided against them. So, according to her, in such circumstances, it was an error on the part of the First Appellate Court

to dismiss the Plaintiff's suit. She, therefore, submitted that substantial questions of law are involved in this appeal and as such the appeal be admitted. As against this, Shri P.S.Dani, ld. Advocate for the Respondent Nos.2, 3, 5 to 9, 11, 12, 13, 15 & 16, supported the judgment of the First Appellate Court and submitted that no substantial question of law involved in the matter. He, therefore, submitted that the Appeal be dismissed in limini.

8. At the outset it must be mentioned that both the Courts below have observed that Plaintiff has failed to prove exclusive possession of the suit land. It is pertinent to note that even according to Plaintiff he is not in possession of the entire Survey number but some part of the survey Number is in his possession. The Defendant has infact contended that adjacent to this Survey Number, there is Survey Number 15 and the same is also standing in the name of the Villagers. The Defendants have contended that the Plaintiff ought to have given map of the suit land and as there is no compliance of the provisions of Order VII Rule I of C.P.C., plaintiffs claim should not be allowed. It is true that though the suit was in respect of immovable property, the Plaintiff did not produce any map but only mentioned the boundaries of

the suit land in the plaint. Ofcourse, this is a technical point, I am not inclined to give much importance to the same. From the perusal of the record and judgments of both the Courts below it is clear that both the sides had adduced oral and documentary evidence to prove their respective cases. The First Appellate Court has observed that though Plaintiff and his witnesses have stated that for last some years Plaintiff and his Predecessors were taking fruits of the trees situated in the said land, the Plaintiff did not adduce any written reliable evidence in that behalf. Admittedly, at no point of time, during last 70 years, the Plaintiff or his predecessor made any application to get their names entered in the column of Owner or in the Column of possession in the Record of Rights. On the contrary, even the Plaintiff's witness Nos.4 and 5 have admitted that the villagers used to take their cattle to the land in question for grazing. This position is duly proved. So, even if it is assumed for the sake of argument that there is some fencing to the property in question, still then it is clear that inspite of such fencing the Plaintiff has allowed the Villagers to take their cattle to the suit land for grazing and at no point of time Plaintiff obstructed them. Even in the record of rights and in particular in the column of crop cultivation, there is

no mention of any particular crop, but it is shown that there is grass in the land. So, such entry also supports the contention of the Defendants.

9. Merely because there is some evidence to show that the Plaintiff is taking mango fruits of the trees situated in the said land, one can't jump to the conclusion that the land is in exclusive possession of the Plaintiff. Both the Courts below had dealt with the entire evidence extensively. It is true that the First Appellate Court had infact framed a composite question with regard to possession as well as ownership by adverse possession. But it is quiet evident from the judgment that both the parties had advanced arguments on the point of possession as well as ownership by adverse possession and the First Appellate Court has dealt with this point separately in detail. So, by no stretch of imagination it can be said that any prejudice has been caused to the Plaintiff because of non framing of separate issues. There is no substance in the argument advanced by the learned Advocate for the Plaintiff in this behalf.

10. It is pertinent to note that for the first time in the year 1998 the Plaintiff made an application to get his name entered in the Record of Rights and

accordingly his name was also entered, but ultimately when the Defendants made grievance for the same to the concerned authorities, after due enquiry the said entry has been cancelled and so as on today also the names of the Defendants namely the villagers are shown as the Owners and possessors of the land in question.

11. It is correct that by way of counter claim the Defendants/ villagers had prayed for perpetual injunction against the Plaintiff and the claim in that behalf is rejected by virtue of separate order passed below Exhibit 63 and the Defendants have not challenged the said order in the Superior Court and as such the finding in that behalf has reached finality. However, at the same time, merely because this has happened, one cannot jump to the conclusion that the Plaintiff’s suit ought to have been decreed. When the First Appellate Court found that the Plaintiff failed to prove his exclusive possession over the suit land and also failed to adduce sufficient evidence to prove the essential ingredients of adverse possession, the First Appellate Court rightly held that the Plaintiff is not entitled for injunction. The finding recorded by the First Appellate Court is based on legal evidence. There is no perversity in the finding of facts nor there is any error of law. No substantial question of law is

involved in the matter. Hence the appeal is dismissed in limini.

(S.R.SATHE, J.)